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Attorney for Defendant
EUROGENTEC NORTH AMERICA, INC.

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9 SAN DIEGO DIVISION

10 TROLL BUSTERS LLC,

11 Plaintiff,

12 vs.

13 ROCHE DIAGNOSTICS GMBH, ROCHE
14 MOLECULAR SYSTEMS (RMS), ROCHE
15 DIAGNOSTICS CORP. D/B/A ROCHE
16 APPLIED SCIENCES, EUROGENTEC NORTH
17 AMERICA INC., CLONTECH LABORATORIES
18 INC., INTEGRATED DNA TECHNOLOGIES
19 (IDT), LIFE TECHNOLOGIES CORP., QIAGEN
20 NV., THERMO FISHER SCIENTIFIC, INC.,
QUANTA BIOSCIENCES, INC., GENE LINK
INC., GENSCRIPT USA INC., EMD
CHEMICALS INC., TRILINK
BIOTECHNOLOGIES INC., and CEPHIED,

Defendants.

Case No. 11cv0056 IEG WVG

**DEFENDANT EUROGENTEC NORTH
AMERICA, INC.'S RULE 5.1 NOTICE OF
CONSTITUTIONAL CHALLENGE**

1 Defendant Eurogentec North America, Inc. files this Notice regarding their constitutional
2 challenge to 35 U.S.C. § 292 (the false marking statute), which is set forth in their motion to
3 dismiss the First Amended Complaint, filed on May 6, 2011 in the above-captioned matter.

4 The question raised by Defendant's constitutional challenge is whether 35 U.S.C. § 292
5 violates the Take Care Clause of Article II, § 3 of the United States Constitution by failing to
6 include any of the procedural safeguards that have been held to preserve the constitutionality of
7 other *qui tam* statutes like the False Claims Act, such as the right of the United States to be
8 notified by the relator of a case before a defendant is served, the right to intervene, the right to
9 seek dismissal or settlement of a false marking action over the objection of the relator, and the
10 right to prevent dismissal of the action by the relator.

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12 Respectfully Submitted,

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14 MCKINNEY LAW GROUP APC

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16 Dated: May 6, 2011

By: /s/ Jeffrey A. McKinney

17 Jeffrey A. McKinney

18 Attorney for Defendant
19 EUROGENTEC NORTH AMERICA, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 6, 2011 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

Respectfully Submitted,

MCKINNEY LAW GROUP APC

Dated: May 6, 2011

By: /s/ Jeffrey A. McKinney

Jeffrey A. McKinney

Attorney for Defendant
EUROGENTEC NORTH AMERICA, INC.

cc: Eric H. Holder, Jr.
Attorney General of the United States
DOJ Room B-103 – Service of Process
950 Pennsylvania Avenue NW
Washington DC 20004
(via Certified Mail)

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